

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Denis & Christine Marchand,
Petitioner-Appellants,

v.

Madison County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-61-0238
Parcel No. 071012400200000

On December 14, 2009, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellants, Denis and Christine Marchand, requested a hearing and submitted evidence in support of their petition. They are self-represented. The Board of Review designated Attorney Christopher R. Pose of Connolly, O'Malley, Lillis, Hansen & Olson, L.L.P., in Des Moines as its legal representative. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Denis and Christine Marchand, owners of property located at 3326 135th Court, Cumming, Iowa, appeal from the Madison County Board of Review decision reassessing their property. According to the property record card, the subject property consists of a one-story dwelling having 2602 square feet of above-grade living area, a full basement with 850 square feet of finished area, and a 944 square-foot attached garage. It was built in 2004 and is situated on a 3.08 acre site in the Polo Point Development in rural Cumming. The dwelling has geothermal heating and a quality grade classification of 2+10.

The real estate was classified as residential on the initial assessment of January 1, 2009, and valued at \$469,100, representing \$68,000 in land value and \$401,100 in dwelling value. The Marchands filed a protest with the Board of Review on the grounds that the assessment was not equitable as compared with assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a); that the property is assessed for more than the value authorized by law under section 441.37(1)(b); that there is an error in the assessment under section 441.37(1)(d); and that there has been a downward change in value under sections 441.37(1) and 441.35(3). They claimed \$360,000, allocated \$60,000 to the land and \$300,000 to the dwelling, was the actual value and a fair assessment of the property. The Board of Review denied the protest stating the Marchands did not meet the burden of proof to justify any change in value.

The Marchands then filed an appeal with this Board reasserting their four claims. Because the ground of downward change is only appropriately pled in a non-assessment or “interim” year, we do not consider this basis for relief. *Eagle Food Ctrs., Inc. v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993). However, we note, that the Marchands’ claim of downward change in value in an assessment year is akin to a challenge on market value and a ground they have already pled.

The Marchands first contend their property is inequitably assessed. The Marchands submitted six property record cards (Exhibits 4 thru 9) for properties in Winterset, Prole, and Van Meter that they considered to be comparable to their property. They compare the sale price and assessed value of each. Of the six properties, four sold for less than their assessed value and two sold for more than their assessed value. The sales ratio of these selected properties was 98.9%, indicating closely aligned fair market values and assessed values for the properties. We find these sales/assessment comparisons do not substantiate a claim the subject property is assessed inequitably, nor that on average the selected properties are assessed for more than their fair market values.

The Marchands also contend that their property is over-assessed. The Marchands report that they purchased the land for \$37,500 in 2004. They then spent approximately \$7000 on site improvements. Mr. Marchand contends that all Polo Pointe assessments are higher than the sale prices of the properties and none have sold for as much as the assessed value. He testified that lots in his area are selling for \$20,000 per acre and lots which are larger than his or have better views are assessed for less than his land. The Marchands submitted a summary of the lots in the two Polo Pointe plats. The more recent lot sales (2004 – 2009) ranged from \$8,979.59 to \$20,833.33 per acre with a median price per acre of \$15,522.88. The Marchands' property cost-per-acre at purchase was \$12,175.32, which is below the median but within the range of other lots' prices per acre. Additionally, according to the summary, these other property assessments ranged from \$9552.41 to \$22,222.22 per acre with a median of \$17,690.06. The Marchand lot is assessed at \$22,077.92 per acre, which is above the median, but within the assessment range. The Marchand land assessment includes substantial site improvements, whereas the other properties compared at the time of sale were raw, unimproved lots. Thus, we find Marchand was attempting to compare his improved property's assessment to unimproved lots, which cannot be compared without consideration of these factors.

Mr. Marchand also testified that property values have declined. He pointed to a property located at 1329 Pointe Court as an example. This home initially sold for \$496,300 in 2004 and subsequently sold for \$300,000 in February 2009. However, exhibits indicate that between construction and resale, the property sold at a sheriff's sale in April 2008 for \$399,500. Furthermore, the most recent sale of \$300,000 was sold by a lender. Since foreclosure and lender sales are abnormal sales they are not considered indicative of fair market value unless adjusted. Mr. Marchand acknowledged that in the sale of a foreclosed property the lender is a motivated seller, but indicated that he believed a sale from a lender could still be reflective of market value. However, since lenders

are not interested in holding property, these properties often sell for less than fair market value, and there is nothing about the property located at 1329 Pointe Court to suggest that it was a normal sale.

Mr. Marchand described Polo Pointe as less desirable than other nearby similar developments, such as Glen Oaks, because it has gravel roads, poor snow removal, slow EMS services, and the location is physically distant from the school district in St. Mary.

Additionally, Mr. Marchand testified that the \$450,000 mortgage on the subject property was an open-ended mortgage for construction and although these funds were available, they were not all used. He was uncertain of the total construction costs for the subject property and indicated that his total mortgage debt of \$450,000 likely included indebtedness for other properties which were cross-collateralized in the transaction.

Finally, the Marchands assert that there are two errors in the assessment. First, they contend that the dwelling's square footage of above-grade living area should be changed from 2602 to 2350. Second, they contend that there is no porch off the garage as listed on the property record card and this listing error should be corrected. At hearing, Mr. Marchand testified that the garage size on the property record card is now correct and the porch has been eliminated from the card, leaving only the square feet of above-grade living area in dispute. They contend the correct square footage of the dwelling is 2350. Marchands contend that the property's blueprints are the most accurate, if not the only accurate, information regarding the square footage of the property.

Susan Raye of Iowa Appraisal and Research Corporation in Des Moines completed an appraisal of the subject property. Raye is a certified appraiser with twenty-one years of experience. The Marchands agreed to the appraisal with the restriction that only exterior measurements and observation were permitted. Raye interviewed Marchand to determine interior components and finishes. Raye made assumptions based on the house plans provided. She described housing market

conditions as substantially cooling in the past two or three years, sluggish, and noted a 3% decline in the average sales price in the past year for residential acreages similar to the subject property.

Raye completed the report based on a sales approach using five comparable properties with sales ranging from \$300,000 to \$506,013 and a median sales price of \$345,000. Unadjusted sales prices ranged from \$134.35 to \$224.99 per square foot with a median of \$167.15 per square foot. One of the comparable properties was a foreclosure and one was a short sale, both of which were not considered arms length transactions and given very limited influence in the appraisal because of the distress nature of these sales. She considered sales one through three the primary comparable properties and sales one and two the most proximate and most influential sales in her analysis. She also studied vacant land sales estimating an adjustment of \$7000 per acre and determined approximately a \$5000 adjustment for home sales on hard surface as opposed to gravel roads. In Raye's opinion, the market value of the subject property as of January 1, 2009, is \$407,000.

Raye testified that she made an additional adjustment in her addendum to correct an error by eliminating the square footage of a bump-out area, although this did not affect her opinion of final valuation. In her appraisal, Raye noted that she measured Marchand's property and determined it was 2602 square feet. In her calculations, Raye excluded the atrium space from the above-ground gross living area of the subject property. She testified that she further revised this figure to 2446 square feet by eliminating the square footage of the bump-out error.

Reviewing all the evidence, we find it substantiates the Marchands' claim that their property is assessed for more than authorized by law and that there is an error in their assessment. However, the evidence does not support their claim of inequity. Although Marchand claims the blueprint is the most reliable information to determine the square footage of the property, we find Raye's measurement is the most credible evidence of the square footage of the dwelling's above-ground gross living area. We acknowledge blueprints provide a good indication of a property's *planned* size, however, change to

plans may be made during construction and the final product, the dwelling itself, is most accurate. In this case, Raye measured the property. Accordingly, we determine that the gross living area of the dwelling should be reduced to 2446 square feet. Further, we find Raye's appraisal is the most credible evidence of the fair market value of the Marchands' property as of January 1, 2009.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the

correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Marchands also challenged the assessment on the basis that there had been a downward change in value of the property. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. See *Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. Appl 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment. We find that the evidence supports the Marchands' claim of over-assessment.

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). Because we do not find the evidence sufficient, the claim of inequitable assessment fails.

Section 441.37(1)(d), on which the Marchands rest their third claim, allows a protest on the ground "[t]hat there is an error in the assessment." § 441.21(1)(d). The evidence presented supports their contention that there is an error in the calculation of the gross living area of the dwelling.

Viewing the evidence as a whole, we determine that substantial evidence supports the Marchands' claim of over-assessment as of January 1, 2009. We, therefore, modify the Marchands' property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$407,000, representing \$68,000 in land value and \$339,000 in dwelling value. Further, the evidence supports an error correction in the gross living area of the dwelling to 2446 square feet as determined by the appraiser.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Madison County Board of Review is modified to \$407,000, representing \$68,000 in land value and \$339,000 in dwelling value and that the gross living area of the dwelling be modified to 2446 square feet.

Dated this 25 day of January 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Richard Stradley
Richard Stradley, Board Member

Karen Oberman
Karen Oberman, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>1-25</u> , 2010	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>Joan Welch</u>